

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 24 2014

OFFICE OF
MANAGING DIRECTOR

Roberto Davila
President/General Manager
Radio X Broadcasting Corp.
HC 67 Box 15390
Carr #174 Km. 5.0
Bayamon, PR 00956

Licensee/Applicant: **Radio X Broadcasting, Corp.**
Waiver Request: Late Payment Penalty
Disposition: Dismissed (47 U.S.C. § 159(c)(1), 31
U.S.C. § 3717, 47 C.F.R. § 1.1164)
Station: WXLX-FM
FRN: 0003762150
Fee: Fiscal Year (FY) 2011 Regulatory Fee Late
Fee
Date Request Filed: May 17, 2013
Date Regulatory Fee Paid: Jul. 23, 2012
Date Regulatory Late Penalties Paid: Not Paid
Fee Control No.: RROG-12-00015185
Amount Due: **See Fee Filer**

Dear Mr. Davila:

This responds to Licensee's *Request*¹ for waiver of the statutory penalty, interest and penalty charges, and collection charges that the law requires us to assess because Licensee failed to pay on time its Fiscal Year (FY) 2011 regulatory fee. For the reasons stated herein, we dismiss the *Request* and demand immediate payment of the balance of the delinquent debt.

Our records show Licensee failed to pay when due the required FY 2011² regulatory fees, rather on July 23, 18, 2012, Licensee submitted a partial payment that failed to include the statutory 25% late payment penalty³ and the required statutory interest, penalties, and charges of

¹ Letters from Roberto Davila, Radio X Broadcasting Corp., HC 67, Box 15390, Carr. #174, Km. 5.0, Bayamon, P.R. 000956 to Stephen M. French, OMD-Financial Operations, via FAX 1-202-418-1878 and via Email to ARINQUIRIES (ARINQUIRIES@fcc.gov) (May 16, 2013) (*Request*) with attachments (a) Letter from Roberto Davila, Radio X Broadcasting Corp., HC 67, Box 15390, Carr. #174, Km. 5.0, Bayamon, P.R. 000956 to FCC, P.O. Box # 979084, St. Louis, MO 63197-9000, with copy of check #53719 (Feb. 4, 2012) (*Feb 2012 Letter*); letter from Roberto Davila, Radio X Broadcasting Corp., HC 67, Box 15390, Carr. #174, Km. 5.0, Bayamon, P.R. 000956 to FCC, P.O. Box # 979084, St. Louis, MO 63197-9000, with copy of check # 056548 and FCC Form 159 (Jul. 21, 2012) (*Jul. 2012 Letter*).

² See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

³ 47 U.S.C. § 159(c)(1).

collection that accrue on delinquent debts.⁴ Licensee's partial payment did not resolve its delinquency and red light⁵ status. Indeed, because a partial payment is first applied to the penalties and accrued charges, the regulatory fee account remained delinquent.⁶ Thus, under 47 C.F.R. §§ 1.1164(e)⁷ and 1.1910, we dismiss the *Request* and demand immediate payment. Furthermore, under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, we continue to assess interest, penalties, and charges of collection. Finally, until Licensee pays the remaining fee, the late payment penalty,⁸ and charges of collection, the Commission will withhold action on and thereafter dismiss any pending application.⁹ Even so, as a courtesy, we explain why we would deny the *Request*, even if Licensee had paid the full amount due and requested a refund.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,¹⁰ and "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."¹¹

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2011, the deadline for paying regulatory fees was September 16, 2011.¹² We did not receive proper complete payment from Licensee on or before that deadline. Rather, Licensee's information shows that it submitted an apparent check¹³ that instructed the payor bank to pay "tres mil seiscientos" to the Federal Communications Commission, and thereby created a document contradictory on its face¹⁴ and inconsistent with our rule at 47 C.F.R. § 1.1158 requiring the check to be "denominated in U.S. dollars."¹⁵ Moreover, our records show, when the check was presented, it was returned by your bank to the US Treasury noting that the "Authorization Revoked by Customer."

⁴ 31 U.S.C. § 3717.

⁵ 47 C.F.R. § 1.1910.

⁶ 47 C.F.R. §§ 1.1157(c)(1), 1.1164(c).

⁷ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

⁸ 47 U.S.C. § 159(c).

⁹ 47 C.F.R. § 1.1910(a)(2) & (3) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.").

¹⁰ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

¹¹ 47 C.F.R. § 1.1164; 47 U.S.C. § 159(c)(1).

¹² See note 2, *supra*.

¹³ Feb. 2012 Letter, check #053719.

¹⁴ See UCC § 3-114.

¹⁵ 47 C.F.R. § 1.1158 "Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission"

Licensee challenges the delinquency and additional charges by asserting the "payment was lost or misplaced by [the Commission's] Regulatory Fees Office or Bank with no cause of our own and that the original check #53719 was returned to your offices ... because it was not endorsed as required by law and practice ... no additional efforts to collect were made,"¹⁶

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's assertions¹⁷ do not. First, Licensee provided no evidence supporting its claims of exculpability or improper endorsement. However, even if Licensee provided appropriate supporting evidence and documentation, the assertions do not show a bank error or a legal ground for waiver. Finally, Licensee's penalty and charges are not mitigated by asserting that the check was received by the due date. The form of the check was incorrect because Licensee created the conflict between the words and numbers, and Licensee's bank rejected payment.

The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the Commission waives the penalty, it is "only in the most extraordinary circumstances,"¹⁸ which Licensee did not establish.

Refer to the Commission's fee filer website to determine a payoff, and thereafter make full payment without delay. Because Licensee is delinquent in paying a non-tax debt, under 47 C.F.R. § 1.1910, Licensee is subject to the Commission's red-light rule, and the Commission will withhold action on any application filed or pending and dismiss. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. § 3717. Moreover, the Commission may collect amounts due by administrative offset.¹⁹

Interest and penalties continue to accrue from the date of delinquency, and under the law,²⁰ we will apply debt collection procedures.²¹ Moreover, under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs.

¹⁶ *Request*.

¹⁷ Licensee failed to include evidence to support its assertions of bank error.

¹⁸ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

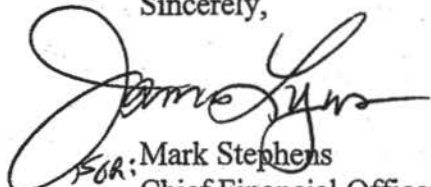
¹⁹ 47 C.F.R. § 1.1912.

²⁰ *See* 47 C.F.R. § 1.1901, *et seq.*

²¹ *See* 31 C.F.R. § 3717.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



FOR: Mark Stephens
Chief Financial Officer